

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GLASSYBABY, LLC, a Washington  
limited liability company,

Plaintiff,

v.

PROVIDE GIFTS, INC. d/b/a RED  
ENVELOPE., a California corporation, and  
NORTHERN LIGHTS ENTERPRISES,  
INC., a New York corporation,

Defendants.

No. 2:11-cv-00380

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES

**JURY TRIAL DEMANDED**

Plaintiff, for its complaint against the defendants, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Glassybaby, LLC is a limited liability company organized under the laws of the state of Washington, with its principal place of business in Seattle, King County, Washington. Glassybaby is a maker and distributor of fine, distinctive, hand-blown glass containers used as, among other things, votive candle holders.

2. On information and belief, defendant Provide Gifts, Inc. d/b/a Red Envelope ("Red Envelope") is a corporation organized under the laws of the state of Delaware with its principle place of business in San Diego, California.

1           3.     On information and belief, defendant Northern Lights Enterprises, Inc.  
2     d/b/a Northern Lights Candles (“Northern Lights”) is a corporation organized under the  
3     laws of the state of New York, with its principal place of business in Wellsville, New  
4     York.

#### 5                                   **JURISDICTION AND VENUE**

6           4.     This Court has personal jurisdiction over defendant Red Envelope because,  
7     among other reasons, on information and belief, Red Envelope markets and distributes its  
8     goods—including goods that give rise to the claims asserted this action—to consumers in  
9     the state of Washington. On information and belief, Red Envelope purposely avails itself  
10    of the privileges of doing business in the state of Washington by, among other things,  
11    distributing printed catalogs to customers in Washington and taking online orders and  
12    payments from Washington residents via its website. Moreover, Red Envelope’s actions  
13    are causing harm in the state of Washington.

14          5.     This Court has personal jurisdiction over defendant Northern Lights  
15    because, among other reasons, on information and belief, Northern Lights markets and  
16    distributes its goods—including goods that give rise to the claims asserted this action—to  
17    consumers in the state of Washington. On information and belief, Northern Lights  
18    purposely avails itself of the privileges of doing business in the state of Washington by,  
19    among other things, distributing printed catalogs to customers in Washington and taking  
20    online orders and payments from Washington residents via its website. Moreover,  
21    Northern Lights’ actions are causing harm in the state of Washington.

22          6.     The Court has original subject matter jurisdiction over this action pursuant  
23    to 28 U.S.C. § 1338 and 28 U.S.C. § 1331, because one or more of the claims at issue  
24    arises under federal law—specifically, 15 U.S.C. §§ 1125(a) and (c).

25          7.     Pursuant to 28 U.S.C. § 1367, the Court has supplemental jurisdiction over  
26    the state law claims at issue in this action because they are so related to the federal law

1 claims as to form part of the same case or controversy—*i.e.*, they arise out of a common  
2 nucleus of operative facts. Moreover, subject matter jurisdiction over the state law claims  
3 exists under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value  
4 of \$75,000, exclusive of interest and costs, and involves citizens of different states.

5 8. Venue in this Court is proper under 28 U.S.C. § 1391(b) because, on  
6 information and belief, the defendants reside in this District (*i.e.*, are subject to personal  
7 jurisdiction here), and because a substantial part of the events giving rise to the claims  
8 occurred here.

### 9 **FACTS**

10 9. The concept for Glassybaby was conceived in 1998 as its founder, Lee  
11 Rhodes, was struggling to survive a rare form of lung cancer. Over the next few years,  
12 Rhodes learned to blow glass and began selling her hand-made creations to others. After  
13 seeing the strong, positive responses that others had to her product, she founded  
14 Glassybaby and hired other glassblowers to help increase production and spread  
15 Glassybaby to a broader market.

16 10. In 2003, Glassybaby opened its first retail store. Today, the Madrona  
17 neighborhood of Seattle is home to the company's main store and studio, where a team of  
18 dedicated glassblowers produces an average of 200 Glassybaby daily. The company also  
19 has stores in Seattle's University Village; in Bellevue, Washington; and in New York  
20 City's West Village neighborhood at 555 Hudson St.

21 11. The distinctive design of Glassybaby hand-blown glass containers  
22 constitutes a famous trademark that serves to distinguish Glassybaby from glass votive  
23 holders made by other manufacturers. The fame and distinctiveness of this trademark  
24 among the consuming public has been established by widespread coverage in print and  
25 television journalism, extensive marketing and promotion, and appearances on national  
26 broadcast television and radio programs.



1           12. Among the consuming public, the unique and distinctive design of  
2 Glassybaby glass containers has become recognizable as a mark of high-quality,  
3 exclusive, handmade glass. Moreover, because a portion of Glassybaby's revenue is  
4 donated to charitable organizations, members of the consuming public can be confident  
5 that by purchasing a genuine Glassybaby, not only are they acquiring a beautiful,  
6 handmade piece of glass, they are also providing financial assistance to worthy causes.

7           13. On information and belief, defendant Northern Lights is importing,  
8 marketing, and selling products referred as "Jeweltone votive holders," which are  
9 confusingly similar in appearance to Glassybaby's distinctive, protected design. On  
10 information and belief, these products are imported by Northern Lights from one or more  
11 manufacturers in China.

12           14. On information and belief, Northern Lights sells these confusingly similar  
13 "Jeweltone votive holders" to Red Envelope and other possibly other consumers via its  
14 company catalogs and website. Northern Lights' marketing and sale of these products to  
15 Red Envelope and other members of the public has the potential to mislead or confuse  
16 consumers regarding the source, sponsorship, or affiliation of these products—i.e., to  
17 mislead customers into believing they are purchasing genuine Glassybaby.

18           15. On information and belief, defendant Red Envelope resells Northern  
19 Lights' products through the Red Envelope catalog and website, referring to them as  
20 "jewel tea light holders." Red Envelope's marketing and sale of these products to the  
21 public has the potential to mislead or confuse consumers regarding the source,  
22 sponsorship, or affiliation of these products—i.e., to mislead customers into believing they  
23 are purchasing genuine Glassybaby.

24           16. As a result of Northern Lights' and Red Envelope's actions, there is a  
25 likelihood that consumers are being or will be confused or misled into believing they are  
26 purchasing an authentic Glassybaby when, in fact, they are purchasing a cheaply made

1 imitation that is imported by Northern Lights from China. Moreover, if their actions are  
 2 not enjoined, Defendants' actions are likely to diminish the ability of the Glassybaby  
 3 design to continue to distinguish genuine Glassybaby products from those made and sold  
 4 by others.

5 17. Defendants' marketing and sale of these "Jeweltone votive holders" and/or  
 6 "jewel tea light holders" (collectively, "Imitation Products") is not authorized by  
 7 Glassybaby. Images of the Imitation Products taken from defendants' marketing materials  
 8 are attached hereto as Exhibit A (Northern Lights) and B (Red Envelope). These images  
 9 are merely illustrative of the Imitation Products; they are not intended to be a complete  
 10 collection of all infringing products or activities.

11 18. After becoming aware of Defendants marketing and sale of the Imitation  
 12 Products, Glassybaby wrote to both Red Envelope and Northern Lights to ask that they  
 13 cease marketing and selling the Imitation Products because they violate Glassybaby's  
 14 rights in the distinctive Glassybaby design and constitute unfair competition, under both  
 15 federal and state law.

16 19. Neither Red Envelope nor Northern Lights has complied with  
 17 Glassybaby's request. Rather, the Imitation Products remain available for sale through  
 18 Defendants' websites and catalogs and continue to cause actual or potential confusion  
 19 among the consuming public, as well as damage to Glassybaby's goodwill. Unless  
 20 Defendants are enjoined from continuing to market and sell the Imitation Products, their  
 21 actions will continue to dilute the distinctiveness of Glassybaby's famous mark and cause  
 22 irreparable damage to Glassybaby.

23 **COUNT I:**  
 24 **Infringement – 15 U.S.C. § 1125(a)**

25 20. Defendants' acts of importing, marketing, and/or selling the Imitation  
 26 Products violate the Lanham Act, 15 U.S.C. § 1125(a), by causing among the consuming

1 public a likelihood of confusion, mistake, or deception as to the affiliation, connection, or  
 2 association of the Imitation Products with those of Glassybaby.

3 21. Defendants' importing, marketing, and/or selling the Imitation Products  
 4 further violates 15 U.S.C. § 1125(a) by causing among the consuming public a likelihood  
 5 of confusion, mistake, or deception as to the origin, sponsorship, or approval of  
 6 Defendants' Imitation Products by Glassybaby.

7 22. Defendants' acts of infringement in violation of 15 U.S.C. § 1125(a) have  
 8 been willful and without regard for Glassybaby's rights. Unless enjoined, Defendants'  
 9 actions will cause further and irreparable harm to Glassybaby.

10 **COUNT II:**  
 11 **Dilution – 15 U.S.C. § 1125(c)**

12 22. Defendants' actions of importing, marketing, and/or selling the Imitation  
 13 Products impairs or is likely to impair the distinctiveness of the Glassybaby design and  
 14 thereby diminish its capacity to distinguish Glassybaby's glass votive holders from those  
 15 of its competitors.

16 23. Further, Defendants' actions of importing, marketing, and/or selling the  
 17 Imitation Products is tarnishing or is likely to tarnish the reputation of Glassybaby because  
 18 the Imitation Products are of inferior quality and artistry to genuine Glassybaby and do  
 19 not directly support the charitable causes that Glassybaby is widely known and celebrated  
 20 for supporting.

21 24. As a result of these actions, Defendants are causing dilution or likelihood  
 22 of dilution of Glassybaby's famous design mark, in violation of the Lanham Act, 15  
 23 U.S.C. § 1125(c). Unless enjoined, Defendants' actions will cause further and irreparable  
 24 harm to Glassybaby.

25 25. Defendants' acts of dilution in violation of 15 U.S.C. § 1125(c) have been  
 26 willful and without regard for Glassybaby's rights. Specifically, Defendants' conduct



1 reflects their willful intent to trade on the famous Glassybaby mark and/or to harm the  
2 reputation of the Glassybaby mark.

3 **COUNT III:**  
4 **Trademark Dilution Under Washington Law RCW 19.77.160**

5 26. By the actions described above, Defendants actions are in violation of  
6 RCW 19.77.160. Defendants' importing, marketing, and selling the Imitation Products in  
7 Washington has caused dilution of Glassybaby's distinctive and famous product design.  
8 Unless enjoined, Defendants' actions, which reflect willful intent to trade on Glassybaby's  
9 reputation and fame, will continue to cause dilution to Glassybaby's famous mark and  
10 irreparable harm to Glassybaby's goodwill.

11 **COUNT IV:**  
12 **Unfair Competition Under RCW 19.86.020**

13 27. By the actions described above, Defendants have committed unfair or  
14 deceptive acts in trade or commerce. These actions affect the public interest by, among  
15 other things, causing or creating a likelihood of confusion regarding whether the Imitation  
16 Products are genuine Glassbaby. These actions, and the resulting likelihood of confusion  
17 and dilution of Glassybaby's mark, have proximately and in fact caused injury to  
18 Glassybaby's business or property, and will continue to cause injury unless enjoined.

19 28. Defendants have violated RCW 19.86.020 and are consequently liable to  
20 Glassybaby for the injuries resulting therefrom.

21 **PRAYER FOR RELIEF**

22 Glassybaby prays for entry of a judgment against Red Envelope and Northern  
23 Lights that provides as follows:

24 a. Enjoining Defendants from further importation, marketing, and sales of the  
25 Imitation Products or any other products that are confusingly similar in appearance to  
26

1 genuine Glassybaby glass votive holders, pursuant to 15 U.S.C. §§ 1116(a) and 1125(c)(5)  
2 and RCW 19.77.160(1) and 19.86.090;

3 b. Requiring Defendants to file with the Court and serve on Glassybaby an a  
4 report in writing and under oath setting forth in detail the manner and form in which they  
5 have complied with the foregoing injunction, pursuant to 15 U.S.C. § 1116(a);

6 c. Awarding Glassybaby its actual damages, Defendants' profits, and the  
7 costs of bringing this action, pursuant to 15 U.S.C. §§ 1117(a) and RCW 19.77.160(2) and  
8 19.86.090;

9 d. Trebling the award of Glassybaby's actual damages, pursuant to 15 U.S.C.  
10 § 1117(a) and RCW 19.77.160(2) and 19.86.090;

11 e. Awarding Glassybaby its reasonable attorney fees under 15 U.S.C.  
12 § 1117(a) and RCW 19.77.160(2) and 19.86.090;

13 f. Requiring Defendants, pursuant to 15 U.S.C. § 1118, to (i) destroy all  
14 Imitation Products—and any marketing or promotional materials that depict images of or  
15 contain offers to sell the Imitation Products—in their possession, custody, or control; and  
16 (ii) remove any depictions of or references to the Imitation Products from printed or  
17 online promotional or advertising materials in their possession, custody, or control; and

18 g. Awarding Glassybaby such other relief as the Court deems just and  
19 equitable.



**JURY DEMAND**

Glassybaby demands trial by jury on all issues so triable.

Dated this 4th day of March, 2011.

McNAUL EBEL NAWROT & HELGREN

By: /s/ David A. Linehan  
Robert M. Sulkin, WSBA No. 15425  
David A. Linehan, WSBA No. 34281

Attorneys for Plaintiff

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***EXHIBIT A***

# Northern Lights Candles™

FRAGRANCED

UNFRAGRANCED

WHAT'S NEW

ACCESSORIES

VIEW BASKET

## VOTIVE HOLDERS

Jeweltone votive holders have a rounded, oval shape with a heavy clear bottom and rich color above. Measure 2.75" diameter at the widest point x 3" height.



### Jeweltone

Color, Fragrance, Style or Size

Sapphire

Quantity

1

Price \$6.49

ADD TO BASKET



Basic Accessories - 12pc 6hr Tealight  
\$7.99



AromaZone - 12pc Sampler  
\$22.99



Nordica Fluted Candleholder - 2.62" x 2.5" Votive Holder  
\$4.99



Fluted Votive Cup - Amber  
\$4.99



Amethyst  
\$6.49



Sapphire  
\$6.49



Topaz  
\$6.49

CLEARANCE | GIFT CERTIFICATE | CONTACT US | ABOUT US | WHOLESALE | MAILING LIST

SEARCH

for Color, Fragrance or Size



***EXHIBIT B***

jewel tea light holders from...



gifts.redenvelope.com/gifts/jewel-tea-light-holders-30010408?viewpos=124&amp;trackinggroup=rf50

Wikipedia

Washington Secretar...

Send a Text Message

Remember The Milk - ...

Shorten with bit.ly

Share on Posterous

1.888.269.3274 24 Hours

Other bookmarks

christmas

occasion

for her

for him

jewelry

kids &amp; baby

for the home

specials

search

Keyword / Item #

go

gift guide



reminders

catalog quick order

Congratulations! Enter "SAVE10" during checkout and receive 10% off of today's order.

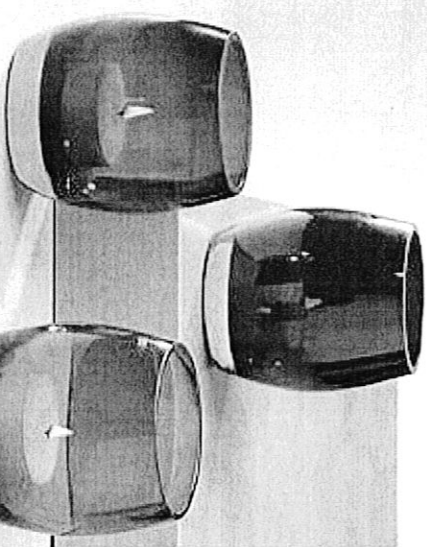
## jewel tea light holders

\$39.95



Be the first to write a review.

Like Be the first of your friends to like this.



roll over image to zoom in

## gift description:

Fabulous for year-round entertaining, our jewel-tone tea light holders cast a colorful glow anywhere you need it. Our set of three, hand-blown tea light holders come in a rounded, oval shape with a heavy clear bottom and rich color above.

- hand-blown glass
- colors: amethyst, sapphire and topaz
- 3 tea light candles included
- 3 1/4" high x 2 3/4" diameter

Item #30010408

add our signature gift box?

please select



jewel blossom vases \$39.95

quantity

1

ordering more than 10?

earliest possible arrival date

Fri, December 10 2010

this gift includes a story card

Click here to read the story that makes your gift special.

ADD TO CART

Select desired delivery date during checkout.

view other items available for delivery

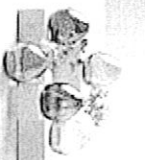
Tomorrow

Sunday

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deluxe baby keepsake kit \$59.95



jewel blossom vases \$39.95

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